MALAYSIAN REPORTS

AHMAD BIN SAPALU v. JENEDIAH BINTI ASMAUL

[A.C.J. (Seah J. (President), Datuk Haji Abdul Wahid Wee, Resident and O.K.K. Tuan Haji Taib bin Menggah)
October 28, 1974]
[Kota Kinabalu — Native Court of Appeal No. 12 of 1974]

Native Customary Law — Marriage — Consent of adult — Native Court ordering a man to marry against his will — Muslim law — Native custom — Contrary to public policy.

Muslim Law — Marriage — Consent of adult — Order of native court compelling man to marry against his wishes.

In this case the Native Court at Paper acting on a complaint of illegal sexual intercourse had ordered the appellant to pay a fine of $150 and to marry the girl, Jenediah, and pay a dowry according to custom. It was also ordered that if he failed to marry the girl he will be imprisoned. The District Officer confirmed the order and the appellant appealed.

Held: the Native Court was wrong in making an order compelling the appellant to marry the respondent against his wishes and that part of the order of the Native Court must be set aside.

Case referred to:-

(1) *Asang bin Lintuhun* v. *Yatun bin Datu Bidin,* Lee Hun Hoe's Cases on Native Customary Law in Sabah (1953-1972), p. 76.

NATIVE COURT OF APPEAL.

Seah J., President (delivering the judgment of the Court): At the conclusion of the hearing on January 9, 1974 the Native Court at Papar purported to make the following order, namely:

"Ahmad is ordered to pay a fine of $150 and he is further ordered that he is to marry Jenediah and pay a dowry according to custom. Failure to pay the fine he is to be sent to prison for 3 months and failure to marry the girl he will be imprisoned.

The girl is ordered to pay a fine of $150 default one month's jail".

This purported order of the Papar Native Court was confirmed by the District Officer at Papar on January 22, 1974.

The appellant is dissatisfied with the decision and has now appealed to us.

When the appeal came before us on September 26, 1974 and after reading the record of proceedings, we made the undermentioned order, namely:

"The court is of the view that the Native Court at Papar should be directed to furnish a report in writing explaining whether the decision to order the appellant, Ahmad bin Sapalu to marry the respondent, Jenediah binti Asmaul was based on native law and custom or Muslim law or Islamic law."

We have now received a reply to the effect that the purported order directing the appellant to marry the respondent was based on Muslim law.

In the Native Court of Appeal's case of *Asang bin Lintuhun* v. *Yatun bin Datu Bidin*(1) it was decided that:

(i) according to Muslim law the consent of an adult was necessary to the validity of a marriage;

(ii) that regardless of the question of public policy it was contrary to native custom and Muslim law to force a man to marry against his will. —

This judgment was given on March 31, 1967.

Following this decision it is plain that the Papar Native Court was wrong to make an order compelling the appellant to marry the respondent against his wishes. The Native Court can only suggest that the appellant marries the respondent. This of course, has no legal effect if the appellant disregards the suggestion. Since the appellant has made it clear in no uncertain terms that he does not wish to marry the respondent, this court has no alternative but to set aside that part of the order of the Papar Native Court purporting to order the appellant to marry the respondent and to pay the customary dowry, or to go to prison if the appellant refuses to marry the respondent.

This court affirms the order of the Papar Native Court ordering both the appellant and the respondent to pay a fine of $150 each. It is hereby ordered that in default of payment of this fine within thirty days from date hereof, the party shall be committed to the civil prison for a period of two months. According to native custom the appellant is further ordered to pay to the respondent berian of $100 within thirty days from date hereof. And in default the appellant shall be imprisoned for a period of thirty days. Both sentences to run concurrently.

To that extent the appeal is allowed.

Order accordingly.

WONG TIN VUI v. PATRICK MIDOK & ANOR.

[O.C.J. (Yusoff J.) October 31, 1974]
[Kota Kinabalu — Civil Suit No. 42 of 1972]

Tort — Negligence — Loss of vision in right eye — Damages.

Damages — Loss of vision in right eye — Fall in value of money.

The plaintiff was involved in a collision between a motor car driven by the second defendant and a bicycle ridden by himself. He sustained various personal injuries resulting in the loss of vision in his right eye. Interlocutory judgment was given against the defendants and the only question to be decided was that of damages.

Held, in the circumstances of this case, the court would award $20,000 for the loss of vision in the right eye and scars on his face, $3,000 for pain and suffering and $5,000 for loss of amenities and other disadvantages.

Cases referred to:-

(1) *Mohamed Ikhawan* v. *Johar & Anor.* [1966] 1 M.L.J. 179.

(2) *Peck Hock Ser* v. *The Green Bus Co. Ltd.* [1964] M.L.J. lxxiii.

(3) *Drenan* v. *Greer* [1957] M.L.J. 77.

(4) *Low Ah Tow* v. *Yusof bin Kayab* [1954] M.L.J. 112.

(5) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29.

(6) *Phuah Jee Suan* v. *Nila Vasu Pillai* [1973] 1 M.L.J. 186.

CIVIL SUIT.

Clement Skinner for the plaintiff.

Defendants in person.

Yusoff J.: On the 17th of August, 1970 at about 8.00 a.m., the plaintiff, a 14 years old boy was riding his bicycle along Mile 7th Tuaran Road towards the direction of Tuaran District whilst the second defendant who was driving a motor-car belonging to the first defendant along the same road came into collision with the bicycle ridden by the plaintiff. Following the accident, plaintiff sustained various personal injuries resulting in the loss of vision in his right eye. He was admitted to hospital on the same day and was discharged three days later on August 20, 1970.